

JUDICIAL MERIT SELECTION COMMISSION

In the Matter of: Judge Thomas Hughston
Candidate for Active/Retired Circuit Judge

WITNESS AFFIDAVIT
FORM

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement must be completed and returned to the Judicial Merit Selection Commission at least five (5) days prior to the hearing at which I wish to testify in order for the commission to hear my testimony and that the deadline for complaints is **Tuesday, October 22, 2013 at 12 noon.**

In regard to my intended testimony, I will offer information as to the following:

- (1) Set forth your full name, age, address, and both home and work telephone numbers.

Phyllis M. Savenkoff, age 68 ✓
3972 Gift Blvd.
Johns Island, S.C. 29455
Home Phone: (843) 557-0548
Cell Phone: (843) 345-1690

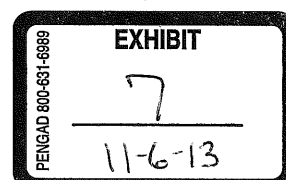
- (2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.

Mrs. Gina Buchardt
5537 Jasons Cove
North Charleston, S.C. 29418
Home Phone: (843) 225-1950
Cell Phone: (843) 412-5267

✓ Mrs. Kelly Dehay M
2441 S. Live Oak Dr.
Moncks Corner, S.C. 29461
Cell Phone: (843) 499-0328

Mrs. Susan Strohm ✓
105 Mohican Cr.
Summerville, S.C. 29483
Home Phone: (843) 821-3765
Cell Phone: (843) 345-1539

✓ Mrs. Laura Hudson -MADD M
1900 Broad River Road
Columbia, S.C. 29210
Work Phone: (803) 413-5040



(3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:

(a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate;

On May 20, 2013 and June 4, 2013 Judge Thomas Hughston signed amended sentencing sheets reducing the Defendant's sentence in half without a public hearing thus not allowing the victim's family to be heard, informed of and attend a proceeding for sentencing which violated the "Victim's Bill of Rights". The sentencing cut was done behind closed doors by Judge Hughston and neither the Solicitor's Office nor the victim's family was notified of this sentence reduction. By this act the Court did not preserve nor protect the victims rights to justice and due process and therefore did not treat the victims with fairness, respect and dignity. Judge Hughston stated at the hearing "I think that I was within the law by not having a hearing". When I addressed the Court with my statement, Judge Hughston sat with his head cocked to one side with a smirk on his face during the entire address and giggled multiple times in court prior to making his statements. He has no ethics, competency nor much character.

(b) specific dates, places, and times at which or during which such allegations took place;

Date: August 1, 2013
Place: Charleston County Courthouse
100 Broad Street
Charleston, S.C. 29401
Time: 9:30A.M.-11:30A.M.

(c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; and

Mrs. Gina Buchardt
5537 Jasons Cove
North Charleston, S.C. 29418

Mrs. Kelly Dehay
2441 S. Live Oak Dr.
Moncks Corner, S.C. 29461

Mrs. Susan Strohm
105 Mohican Cr.
Summerville, S C. 29483

Mrs. Laura Hudson
1900 Broad River Rd.
Columbia, S.C. 29210

(d) how this information relates to the qualifications of the judicial candidate.

By Judge Hughston's acts of May 20, 2013 and June 4, 2013 Judge Hughston not only violated the "Victim's Bill of Rights" but also violated the integrity of our justice system in S.C. This act by Judge Hughston opens the door for other judges to take the law into their own hands and do whatever they want. Judge Hughston lacked judicial professionalism in the courtroom. His attitude was apathetic, discourteous and very offensive towards the victim's family and friends. His facial expressions and laughter in the courtroom not only displayed great lack of respect for the victim's family but also lack of respect for proper judicial procedures.

I submitted my Complaint Form to the Crime Victims' Ombudsman Office on July 28, 2013. I was told by that office that Judge Hughston would have 20 days to respond and that I would receive a copy of that response. He has not responded in writing as of this date.

- (4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

Exhibit A. Transcript of Record of August 1, 2013 with highlights. 30 pages
Exhibit B. My Complaint Form to the S.C. Office of the Governor CRIME VICTIM'S OMBUDSMAN office with enclosure of State's Motion To Reopen Defendant's Sentencing Hearing
Exhibit C. Letter to Judge Hughston dated August 13, 2013 from Mrs. Laura Hudson of MADD.
Exhibit D. Preinvestigation Statement of Phyllis Savenkoff recommending conditions to be adhered to by Samuel McCauley sent to the Solicitor's Office prior to sentencing.
Exhibit E. Statement of Phyllis Savenkoff read at August 1, 2013 hearing highlighted new info. Pages 13-16.
Exhibit F. Notorized statement of Kelly DeHay, MADD volunteer, who attended hearing of Aug. 1,
Exhibit G. Notorized statement of Gina Buchardt, niece, who attended hearing of August 1.
Exhibit H. Five articles from the Post & Courier newspaper from January to August 2013 with highlights.

- (5) State any other facts you feel are pertinent to the screening of this judicial candidate.

Judge Hughston's conduct on August 1, 2013 was unprofessional, inappropriate, unethical and insensitive to the family of Eleanor Caperton. The family felt very belittled when we left the court room. Hughston during the hearing was very flippant by often giggling prior to making statements and by smirking as the family was reading their statements. He gave many in the room the impression that he really did not want to be there and he made it clear that the ONLY reason he was there was to satisfy the "Victim's Bill of Rights Family and friends who was present at this hearing all had the impression that the Defendant's attorney Capers Barr was more in charge than Judge Hughston with statements made in the court room as well as in the involvement of the sentencing of Samuel McCauley. Mr. Barr kept telling the judge what was right or wrong and was leading the judge. Attorneys should not be allowed to have more control in the court room than judges nor to lead judges in court room procedure. At Mr. Barr's request McCauley was unshackled in court. I thought this is against court rules. Mr. Barr stated to the judge that nothing NEW was presented to the court. In my statement I brought out several facts that the public had not heard before. I had recommended ten conditions to be adhered to by McCauley at the time of his sentencing, however, none of these conditions were ever imposed on Mr. McCauley by Judge Hughston, nor mentioned in the court room. As for the resentencing of Mr. McCauley in May and June and no one being notified, please refer to the court transcript Pg. 4 lines 8-20. The judge contradicts himself here. Who told him that certified copies of the Order, paper copies, no longer had to be sent out? In the Post & Courier article dated January 19, 2013 Hughston was quoted as saying "Hopefully your loss of liberty will serve as a stop sign for others". However, in the article dated July 18, 2013 he was quoted as saying "My amended sentence more closely corresponds to the federal sentencing guidelines for such an offense." Being that Judge Hughston is employed by the State of S.C. he is supposed to implement sentences based on state guidelines-not federal. Hughston was also quoted in the Post and Courier article dated August 25, 2013 as saying "I want them (defendant) to feel good when they leave my court room". He also stated in the court room "I am always mindful of my duty to do justice, to love and be merciful, and to be humble and to treat everyone with dignity, respect and to be fair." (Pg. 29 lines 3-6 transcript). The victim's family and friends surely do not feel good when they leave his court room nor are they treated dignity, respect or fairness. Hughston on blog "Chas. Thug Life" is known as the "Felons Friend". I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission,

I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.

Spencer M. Swenberg
Signature

Sworn to me this 30th day of September, 2013

Richard D. H. L.S.
Notary Public of South Carolina

My commission expires: July 24, 2022

Exhibit A

STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF CHARLESTON)	DOCKET NO. 2011-GS-10-6799
)	2011-GS-10-7382
)	
)	
)	
STATE OF SOUTH CAROLINA)	
)	
)	
vs.)	
)	
)	
SAMUEL A. MCCAULEY)	
)	
Defendant)	
)	
)	
)	
)	TRANSCRIPT OF RECORD

August 1, 2013
Charleston, South Carolina

B E F O R E:

THE HONORABLE THOMAS L. HUGHSTON, JUDGE

A P P E A R A N C E S:

SCARLETT A. WILSON, ESQ.
Attorney for the State

CAPERS G. BARR, III, ESQ.
Attorney for the Defendant

JOYCE C. RUEGER, CVR-M
Court Reporter

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PROCEEDINGS

THE COURT: Thank you. Please be seated.

MS. WILSON: Thank you, Your Honor. This is State of South Carolina versus ---

THE COURT: --- let them get him out of the holding cell; just a minute.

[Whereupon, the defendant enters the courtroom]

MS. WILSON: This is State of South Carolina versus Samuel A. McCauley. It's Indictment numbers 2011-GS-10-07382, 2011-GS-10-06799. Those were Indictments for Felony Driving under the Influence Involving a Death and Reckless Homicide.

Your Honor, we are here today in a little bit of an unusual posture. Just for the record the defendant had pled guilty last year to these charges. Sentencing was deferred so that a presentence investigation could be conducted. That was done.

The parties briefed Your Honor before the sentencing which was held in January of this year. The defendant was sentenced. After that the defense filed a motion for reconsideration.

THE COURT: Timely filed it.

MS. WILSON: Timely filed a motion for reconsideration and Your Honor took that under advisement for some time and eventually in May of this year entered

1 a new sentence, which was a reduction of the prior
2 sentence. Through I think just nothing intentional but
3 through the movement of paperwork from your office to the
4 Clerk's office to the parties involved ---

5 THE COURT: --- let me stop you to explain it to
6 you what I just found out this morning about that.

7 MS. WILSON: Yes, sir.

8 THE COURT: Formerly whenever I filed an order in
9 any case I made paper copies, certified paper copies of
10 the order and I mailed it to the attorney for each side
11 immediately; filed it with the Clerk, made copies, mailed
12 a copy to the attorneys for each side.

13 When we -- I've been told -- I was told that I no
14 longer needed to do that because everything is done -- is
15 put on the computer on the Internet and that it is
16 available to both sides through the Internet and so I
17 don't need to have the County bear the expense of mailing
18 all those orders that I do on the civil side.

19 I didn't realize -- nobody told me that the process
20 wasn't the same -- was not the same on the criminal side.
21 And so that's how ---

22 MS. WILSON: --- yes sir ---

23 THE COURT: --- the order didn't get to you. But
24 it was on the Internet and you didn't -- whoever --
25 anybody -- that's how that happened that both sides were

1 not notified of the order. And I don't know how you
2 eventually found out that it was there, but that's what
3 happened ---

4 MS. WILSON: --- yes, sir ---

5 THE COURT: --- in regard to that. In other words
6 it was nobody's fault that I would say that it developed
7 that way.

8 MS. WILSON: In any event once I was made aware of
9 this we filed a motion in response to the court's order
10 to reopen the sentencing. In the meantime the prosecutor
11 handling this case, Ms. Jennifer Williams who handled it
12 from its inception had left our office. She's here with
13 me today.

14 Though she is in private practice she certainly has
15 remained involved in this case and the things that have
16 happened since. When we became aware -- I became aware
17 of the court's order reducing the defendant's sentence I
18 filed a motion to reopen.

19 I captioned it a motion to reopen mainly because I
20 felt like the original motion to reconsider sentence
21 filed by the defendant was actually a motion to reopen
22 because it presented new and different things in addition
23 to some of the same things that had been presented at
24 sentencing. Upon my filing of the motion to reopen the
25 defense has filed a motion to dismiss our motion. It's

1 my understanding based on correspondence from the court
2 to both me and the defendant that you intend to reopen
3 the sentencing and allow the victims to be heard on this,
4 which was our goal to start with.

5 And I just wanted to make sure we were all on the
6 same page as to where we believe we are moving forward
7 with the rest of this hearing.

8 [Whereupon, Mr. Barr confers with his client]

9 MR. BARR: Your Honor, may I ask that Mr. McCauley
10 be unshackled? I don't think that that is ---

11 THE COURT: --- certainly.

12 MR. BARR: I apologize, Your Honor, for...

13 THE COURT: I didn't realize that he was or I would
14 have ordered it immediately.

15 MR. BARR: I didn't want to interrupt the Solicitor
16 in the middle of her...

17 [Whereupon, shackles are removed from the defendant]

18 MR. BARR: Thank you very much. I might add while
19 I'm standing up -- this question about the filing of the
20 order without notice. I might say I talked to the Clerk
21 of Court about this and she advises me that the computer
22 system in the Civil Court in the Common Pleas is set up
23 so that the computer automatically kicks out a
24 computerized notice to the lawyers in the case. But
25 that's not the same in General Sessions. Perhaps ---

1 THE COURT: --- and I didn't realize it wasn't ---

2 MR. BARR: --- we can go to the source, which I
3 think is the Court Administration's computer system ---

4 MS. WILSON: --- right. I think we need to make
5 that very clear that that is not our local Clerk's issue.
6 That is a statewide system ---

7 THE COURT: --- oh, I agree ---

8 MS. WILSON: --- that is enforced ---

9 THE COURT: --- and I just finished talking to her
10 chief deputy computer person about that and he's going to
11 be working on how to handle that and make sure it doesn't
12 happen in the future.

13 MS. WILSON: Yes, sir. So in any event moving
14 forward with this hearing it's my understanding that the
15 court is going to grant our motion to reopen or
16 reconsider, however you would like to style it, and we
17 can move forward in the sentencing aspect of this case.

18 THE COURT: I think you correctly stated everything
19 that brings us to this point. And I've read everything
20 that you and Mr. Barr have submitted in connection with
21 that. And I'll be glad to hear from you Mr. Barr if you
22 want to say anything else. But as I said I have read and
23 considered everything that has been presented.

24 MR. BARR: Well, Your Honor, all I would say I
25 understand that -- based on the court's communications

1 with the Solicitor and with me that the court is going to
2 hear both from the Solicitor and from the victims. But I
3 think it's improper to characterize this as a reopening
4 of the sentencing proceeding.

5 Unlike the rules in Common Pleas which hold motions
6 for reconsideration to matters overlooked by the trial
7 court the rule of law in General Sessions is not the
8 same. So as I stated in my memorandum code section 17-
9 25-326 permits a broader scope of review than in the
10 Civil Court; a broader scope of review at this stage in a
11 criminal matter.

12 So the defendant's motion for reconsideration was
13 not an improper reopening of the sentencing proceeding.
14 It was consistent with the Code section and with the
15 general law, which says that a court can revisit its
16 decision in a criminal case leading up to my point.

17 So I think the nature of this hearing is not a
18 reopening of the sentencing hearing. But it is a motion
19 to alter, modify, or rescind the court's final amended
20 sentencing orders and which places the burden on the
21 State to show good and sufficient cause by a
22 preponderance of the evidence that that should be. And
23 so I ---

24 THE COURT: --- all right, let me state my
25 position. What I'm going to do today is I'm reopening or

1 ever how you want to phrase it -- the purpose of this
2 hearing is to fully comply with the Victim's Bill of
3 Rights under the Constitution and Statutes of this State.

4 I did not -- when this came into the process as far
5 as you filing a motion and the State responding and my
6 corresponding back and forth and moving it along and all
7 there was in the concluding paragraph of the State's
8 response there was something like this, if -- and I'm
9 paraphrasing as best I can remember it -- if you want to
10 have a hearing on this we'll be glad to have a hearing on
11 this.

12 And then I said I've got the matter under
13 advisement, give me everything you want me to consider.
14 I'll read it, study it, think about it and if I feel a
15 need for a hearing I'll let you know; not thinking about
16 the fact that the Victim's Bill of Rights and the
17 statutory provisions relative to hearing from victims
18 need to be fully complied with.

19 I think that I was within the law by not having a
20 hearing but I don't there to be any question about my
21 denying anyone the opportunity to be heard under the
22 existing Constitution and laws of this State.

23 So that's the purpose of us being here today is to
24 hear from anyone who wants to speak in regards to this
25 matter at this juncture.

1 MR. BARR: Yes, sir.

2 THE COURT: So that's the way we're proceeding.

3 MS. WILSON: Thank you, Your Honor. And ---

4 MR. BARR: --- and I think it's a matter of --

5 perhaps it's a matter of semantics ---

6 THE COURT: --- I agree ---

7 MR. BARR: --- Your Honor that ---

8 THE COURT: --- I agree.

9 MS. WILSON: It is a matter of semantics because
10 this is an unusual situation and we appreciate the court
11 allowing us to ---

12 THE COURT: --- I can only think of about three
13 that I've ever had -- there are only three times that
14 I've had a resentencing that I know of in 28 years. So
15 these are very, very rare occurrences and very, very rare
16 events and that's why I...

17 MS. WILSON: --- well, there is very little case
18 law on it and again we appreciate your being here because
19 it is important that victims are not left as ---

20 THE COURT: --- I agree ---

21 MS. WILSON: --- as bystanders. And you know we
22 certainly recognize as the prosecutors the difficulty
23 that court's face in sentencing. It is the most
24 difficult thing that Your Honor and your fellow members
25 of the bench do. I think I have, and Mr. Barr has had as

1 his time as Solicitor, some insight into that because we
2 make many decisions that directly impact defendants and
3 what happens with their lives; especially with the death
4 penalty. But I know how seriously the court takes this
5 and I don't intend to criticize the court. I'm here to
6 protect the process and ---

7 THE COURT: --- thank you very much. I appreciate
8 that. You may proceed.

9 MS. WILSON: Your Honor, as I stated earlier our
10 position as we have set forth in many hours with Ms.
11 Williams as the prosecutor through I believe it was a ten
12 page or so presentence memorandum which the court
13 considered, hours of argument and persuasion with the
14 court at the guilty plea hearing.

15 Then a nineteen page response to the motion to
16 reconsider I think the court is very clear on the State's
17 position that we believe your original sentence was
18 appropriate. It was fair, it was reasoned. The court
19 has made mention of his reliance or consideration of the
20 Federal sentencing guidelines.

21 I agree with the court that some guidelines would be
22 helpful if we had them in the State of South Carolina. I
23 do believe that comparing this case to a Federal
24 involuntary manslaughter case is not an analogous
25 situation. But I think if we're going to go down the

1 pathway of using Federal guidelines, we use them in drug
2 and gun cases as well; and that does not seem to be what
3 happens here at least in Charleston and Berkeley
4 Counties. In any event ---

5 THE COURT: --- I would recommend we do that.

6 MS. WILSON: In any event we believe the ten year
7 sentence was very thoughtful. We know that you took our
8 arguments to heart, that you took the defendant's side to
9 heart and came up with a sentence that was fair that
10 addressed some of the goals of sentencing such as
11 incapacitation, deterrence, retribution, rehabilitation,
12 and restoration.

13 All of those things are important to this court.
14 You've made that clear many times over the years and we
15 think that a ten year sentence did that. We also think
16 that the ten year sentence is not beyond the pale of
17 other sentences in similar situations. And again, that
18 has been outlined in nineteen pages of memorandum for the
19 court which I know you've considered.

20 The victims are here and present and would like to
21 address you. And they too are grateful that you are
22 allowing them this opportunity because I've explained to
23 them as well that it is grey as to whether or not you
24 even have to do this. So the fact that you are doing it
25 is most appreciated by us and them. And with that we

1 would ask whoever would like to go first if you would
2 step forward.

3 [Whereupon, an individual moves forward]

4 THE COURT: Yes, ma'am? Tell me your name please
5 ma'am?

6 MS. SAVENKOFF: Phyllis Savenkoff.

7 THE COURT: All right. Would you spell that for
8 the court reporter?

9 MS. SAVENKOFF: P-H-Y-L-L-I-S S-A-V-E-N-K-O-F-F.

10 THE COURT: All right. Thank you very much. Go
11 right ahead.

12 MS. SAVENKOFF: I have stated at past hearings that
13 my sister Eleanor Caperton was a friend to everyone. She
14 was hardworking, loving, and certainly did not deserve to
15 die the horrific death at the hands of Samuel.

16 McCauley's original sentence of fifteen years must
17 be served by McCauley given the fact that this case is
18 not your typical D-U-I felony with death case. This
19 wasn't an instance of someone having too many drinks at a
20 bar and then crossing over a center line on a two-way
21 street killing someone.

22 This well-planned party on a boat at the marina on
23 the day of July 23, 2011 was a deliberate attempt to
24 party and get drunk. Each attendee at the party was
25 furnished alcohol that they wanted. Car keys were not

1 taken away by any adults. Samuel arrived at the boat
2 around 4 o'clock p.m. on July 23rd where he drank and
3 partied until almost 12 o'clock midnight.

4 Approximately 11:30 p.m. Samuel tried to leave the
5 boat. And after several attempts to restrain him on the
6 boat he grabbed his car keys, climbed off the boat and
7 ran away. He got into his car and drove off.

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8 A friend from the party, Branch Moore [ph] had
9 McCauley on the phone just prior to the accident telling
10 him to pull over on the road, but Samuel did not listen.
11 Branch told another party attendee that Sam was not
12 making sense.

13 Samuel McCauley then drove up the Romney Street exit
14 of Interstate 26, which put him on the wrong side of the
15 Interstate highway. He was driving approximately 60
16 miles per hour when he rounded a curve and struck my
17 sister head-on killing her.

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18 What makes this D-U-I Felony with Death case even
19 worse and why all car keys should have been taken from
20 the attendees is that just one month prior to this
21 accident Samuel had a similar incident where he had been
22 drinking too much and basically did the same thing as he
23 did on the night of July 23rd on the boat; he just took
24 off running away and ended up in the basement of a
25 friend's house not knowing where he was or how he got

1 there. This kind of irrational behavior is not one of a
2 responsible teen who should have been drinking alcohol
3 and car keys not taken. This previous incident was a
4 warning that neither Samuel nor his friends heeded which
5 resulted in the second incident which took the life of my
6 sister.

7 Samuel's evidence and history of alcohol abuse was
8 indicated in the eight month presentencing investigation.
9 This accident was not your typical D-U-I felony but much
10 worse due to the fact that the attendees planned to get
11 drunk, no car keys were taken, and there was a previous
12 incident of Samuel's unpredictable behavior.

13 As McCauley could have been sentenced up to 35 years
14 for the two charges of Felony D-U-I with Death and
15 Reckless Homicide the sentencing of fifteen years by
16 Judge Hughston in January is not out of line with the
17 other D-U-I cases in this area.

18 He killed my sister while grossly intoxicated not
19 knowing where he was or what he had done. He was told to
20 pull over on the road, but didn't listen. Per the police
(21) report of the arresting officer McGowan [ph] Samuel was
(22) uncooperative at the hospital after the accident and was
(23) unable to answer any questions. He was foaming at the
(24) mouth and making sentences that were not making sense.
(25) To quote several: Bob Marley is coming to visit me. I

up
1st
2nd
3rd
In the Court room

Exhibit E

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(1) want to go to Colorado and live dangerously. I want a
(2) thrill out of life. You investigate the murders of gang
(3) members. Would it be bad if someone killed an MS-13
(4) member? If I get a tattoo in jail will you fill it with
(5) blood?

(6) Mr. McCauley also quoted that his Mother had a
(7) bastard child. By Mr. McCauley's own words and action he
8 is not the genuine upstanding person that Capers Barr
9 makes him out to be. Therefore, Mr. McCauley is not
10 worthy of having both his charges cut in half by you.

11 In two newspaper articles McCauley was quoted as
12 saying I wish I could have died instead of her. How is
13 someone who is willing to die for his victim not willing
14 to serve his time for the taking of a life?

15 This two year process for justice has put tremendous
16 stress on my family as well as individual relationships
17 within the family. No victim should have to go through
18 this unreasonable process for justice for their loved
19 one. I am praying that justice will be served in this
20 case.

21 THE COURT: All right. Ms. Wilson, anything else?

22 MS. WILSON: Yes sir, Your Honor.

23 THE COURT: Beg your pardon?

24 MS. WILSON: Yes sir, there are.

25 [Whereupon, another individual comes forward]

1 THE COURT: All right. Tell me who you are.

2 MS. BUCHARDT: My name is Gina Buchardt. G-I-N-A
3 B-U-C-H-A-R-D-T. I am Eleanor Caperton's niece. As far
4 as what I would like to say today I don't have anything
5 written down. Everything is coming from my heart; it
6 may not come out as smoothly as I would like.

7 But what I would like to say is that it is really
8 hard for me to believe that you know even though the law
9 states it is allowed that a motion to reconsider was
10 allowed to begin with considering the Judge's original
11 sentence, considering that there was an eight month long
12 presentencing investigation that investigated everything
13 surrounding this.

14 All of that taken into consideration an original
15 hearing that was more like a trial with witnesses than
16 just a sentencing hearing. Even you yourself at the end
17 of that sentencing hearing, Judge Hughston, stated that
18 if Samuel McCauley's sentence was too light that it may
19 not prove effective for deterrent of other teens not to
20 drink and drive as well.

21 With this said having to deal with this again it's
22 just stretching out our trauma. It doesn't let us heal.
23 It doesn't give us a chance to move on. The two year
24 anniversary of my aunt's death was just last week. Right
25 before she died she had planned a cruise on her favorite

1 cruise ship, the Dream, with her best friends. We are
2 leaving Saturday to go on that cruise and sprinkle her
3 ashes. And with all of that said and with this coming up
4 right now is the most inappropriate thing that I've ever
5 had to deal with.

6 And I just needed to say that I don't think it's
7 fair even though it's the law. And I don't think its
8 right.

9 THE COURT: Thank you.

10 [Whereupon, another individual comes forward]

11 THE COURT: All right. Yes sir, tell me your name
12 please sir?

13 MR. GRAY: Ronald Gray.

14 THE COURT: All right. Are you her son?

15 MR. GRAY: Yes, sir.

16 THE COURT: All right. I believe it's Doctor
17 Gray?

18 MR. GRAY: Correct.

19 THE COURT: All right. I'll be glad to hear from
20 you, Doctor Gray.

21 MR. GRAY: I agree with everything that my aunt and
22 my cousin said. I don't have a lot to say; it's going to
23 be very brief. Us being here today is the very reason
24 why D-U-I is such a problem in this State. The people
25 that commit this kind of crime get off way too lightly

1 and there are no consequences to their actions. And you
2 yourself said at the last hearing that a sentence is not
3 just about punishment; it is to be a deterrent for
4 others. And I really think you need to stand behind
5 those words. Thank you.

6 THE COURT: All right. Anything else from the
7 State?

8 MS. WILSON: No sir, Your Honor.

9 THE COURT: All right. I might just say at that
10 juncture, of course, as the Solicitor has mentioned I
11 have been an advocate of sentencing guidelines for many
12 years. The only guideline that the legislature has given
13 us in regard to this situation is a minimum of one year,
14 a maximum of 35 years.

15 So, someone has made, supposedly the legislature has
16 made a supposedly reasoned judgment to allow one year as
17 the general deterrent in a case like this. I don't think
18 that's a good -- I don't think that's a good guideline.

19 So in response as I said the only reason in my
20 opinion to send Mr. McCauley to the penitentiary is to be
21 a general deterrent. And the law says one year can be a
22 general deterrent. Mr. Barr, I'll be glad to hear from
23 you if there is anything you want to say.

24 MR. BARR: Your Honor, thank you. May it please
25 the court? For the record I would like to restate our

1 legal position, which is we still contend that the court
2 made no error in the manner in which the court ruled.
3 And I would also like to say and I informed Solicitor
4 Wilson about this the other day that we also believe that
5 the State's motion was untimely. If I may hand up to the
6 court and to the reporter a letter I can explain a little
7 more why.

8 [Whereupon, defendant's exhibit number 1 is marked
9 by the court reporter]

10 [Whereupon, Mr. Barr proffers documents to the
11 court]

12 MR. BARR: Your Honor, we marked as the defense
13 exhibit number 1 a letter that I wrote to the court on
14 May 30th, 2013 but let me address that in just a minute
15 because it's part of a chronology here.

16 During the interval where we explained to the court
17 our discovery that the General Sessions and Common Pleas
18 computer systems don't operate quite the same we
19 discussed how this was discovered.

20 My paralegal happened to be checking the website
21 after the motion for reconsideration was filed and that's
22 how we learned that the order had been filed. And as
23 Your Honor may recall the initial amended sentencing
24 order only modified the felony D-U-I Indictment; and I'm
25 sure at that time the court had simply overlooked the

1 Reckless Homicide Indictment. So exhibit 1 is my letter
2 to the court in which I informed Your Honor that I
3 discovered the filing of the order and asked whether it
4 was your intention to also modify the Reckless Homicide
5 order.

6 But the point of bringing this up is that I sent a
7 copy of it to Solicitor Wilson. So on May 30th of 2013
8 her office was aware that the sentence had been modified.
9 Now Your Honor, I recognize that Ms. Williams had been
10 the Assistant Solicitor. Had Ms. Williams still been
11 with the Solicitor's Office I would have sent it to her
12 but by that time she had left.

13 I sent it to Solicitor Wilson. I don't contend that
14 Solicitor Wilson saw it and ignored it. My guess is it
15 was put in a file somewhere. But I am compelled to make
16 the argument that to the extent that post-trial motions
17 must be filed in ten days the Solicitor was put on notice
18 on May 30th that the sentences had been amended.

19 MS. WILSON: Judge, I need to -- if we're making
20 the record straight I need to interject here.

21 MR. BARR: Sure.

22 MS. WILSON: My office received this letter; I did
23 not, on June the 4th. That was for the first sentencing
24 sheet. We never received a second sentencing sheet. So
25 if we're talking about notice and timely filing things we

1 never received notice of the second amended sentencing
2 sheet.

3 THE COURT: Well, it was done the same way the
4 first one was done.

5 MS. WILSON: Right, I understand ---

6 THE COURT: --- unfortunately because I didn't
7 understand. We still didn't realize at that point -- I
8 didn't realize at that point what had happened.

9 MR. BARR: I'm not contending otherwise, Your
10 Honor.

11 THE COURT: Okay. I understand ---

12 MR. BARR: --- and I just ---

13 THE COURT: --- and I appreciate your position.

14 MR. BARR: Making that point clear ---

15 THE COURT: --- I don't agree with you but I
16 appreciate your position.

17 MR. BARR: Now, if I may -- if I dive more into our
18 reason for being here we've talked around this but I
19 would like to state fully and clearly that the way that
20 Your Honor handled this motion for reconsideration and
21 the filing of the orders was proper under every
22 consideration of law and practice.

23 We filed a motion to reduce the sentencing and -- in
24 January and on February the 4th of this year Your Honor
25 wrote Ms. Williams and me -- it's a short letter so I'll

1 read the whole thing. It says, [Reading] I received Mr.
2 Barr's motion for reconsideration slash modification of
3 sentence. I suggest Mr. Barr send me anything in writing
4 regarding this by February 15, 2013 and Ms. William may
5 respond in writing by February 25th, 2013 and I will then
6 do an order or may ask for a hearing.

7 So the contention that nobody knew, if there is such
8 a contention, that nobody knew that Your Honor might rule
9 on the briefs is simply not correct because Your Honor
10 told us that at the very outset. Rule 29 of the South
11 Carolina Rules of Criminal Procedure specifically
12 provides as to post trial motions that the motion may, in
13 the discretion of the court, be determined on briefs
14 filed by the parties without oral argument.

15 And I think this harkens back to the day, Your
16 Honor, when circuit judges were rotating more frequently
17 than they do today. Your Honor might have a term of
18 court here in Charleston and you may be in Anderson next
19 week.

20 So my guess is that's why that rule exists so that
21 Your Honor doesn't have to travel back here to actually
22 hold a hearing or you don't have to require the
23 Solicitor, defense lawyer, and defendant to go to
24 Anderson to hear a Charleston motion. So there is a
25 sound public policy reason for that rule. So that --

1 Your Honor has told us you may rule on the briefs without
2 a hearing. The rule says that you may do it that way.
3 So what does the Victim's Bill of Rights say? The
4 Victim's Bill of Rights says in Constitution Article 1
5 section 24 subparagraph A (3) to preserve and protect
6 victim's rights to justice and due process and -- victims
7 of a crime have the right to be informed of and present
8 at any criminal proceedings which are dispositive of the
9 charges where the defendant has the right to be present.

10 And I cited in the return to the State's motion the
11 case of the State v Bradley in which the Court of Appeals
12 specifically held in a case where defendant's post trial
13 motion was denied, ruled against him, and he argued that
14 his due process was violated. The Court of Appeals said
15 he didn't have a right to be there.

16 So, I know the Solicitor is not beating this drum,
17 Your Honor. But to the extent that that is part of why
18 we are here I wanted to clear the air to assert the
19 position that there was absolutely nothing improper under
20 the law, practice, rules, or the Victim's Bill of Rights
21 by the court ruling on briefs.

22 I understand that when Your Honor was informed of
23 the objection of the victim's and the position of the
24 State that you agreed to open this up and that's probably
25 within your discretion. But as a matter of law it is

1 incorrect that there was any violation of law or
2 practice. At least that is our position.

3 So as I said at the outset Judge Hughston, I think
4 that we are bound here by the provisions of the Code
5 section 17-25-326 in the criminal procedure chapter or
6 title of the South Carolina Code of Laws which says that
7 any court order issued pursuant to the provision of this
8 article may be altered, modified, or rescinded upon the
9 filing of a petition -- in this case by the Solicitor --
10 for good and sufficient cause shown by a preponderance of
11 the evidence.

12 So Your Honor issued, properly issued final orders
13 in May and June of this year amending the sentence that
14 it had originally imposed. And therefore the State's
15 motion here is -- has to be under 17-25-326 because there
16 is no other authority for it.

17 And therefore the question before Your Honor is has
18 there been a showing of good and sufficient cause by a
19 preponderance of the evidence to now alter your amended
20 sentencing orders. And I suggest there has not been.

21 The State's ground was in the written motion was
22 purely based on the assertion that Your Honor's procedure
23 violated the Victim's Bill of Rights. And again with --
24 and I know that I try to understand how the Caperton
25 family feels; I couldn't begin to understand how they

1 feel. I absolutely couldn't. I'm close to Ms. -- the
2 lady, Ellie Caperton's age, which means that my wife is
3 as well. And I think -- I don't know that I could live
4 if something like this had happened to my wife. So I
5 understand the pain that they feel.

6 But with all due respect they have not presented
7 anything new to the court today. Everything that we've
8 heard today was heard in the prior hearings and in the
9 prior briefings. I rough counted the briefing pages that
10 Your Honor has received in this case. It was about 175
11 pages of materials; over an inch thick, that Your Honor
12 has received. And I know you've read it.

13 And with respect to the Solicitor's allusion to the
14 Federal sentencing guidelines that, of course, wasn't the
15 basis for my motion. We researched the Clerk of Court's
16 records. And as we pointed out to Your Honor in our
17 brief for reconsideration of 19 felony D-U-I death cases
18 handled in Charleston County in the previous five years
19 Sam McCauley is the youngest offender.

20 Of those 19 cases Sam McCauley's active sentence was
21 the third highest. His total sentence was the second
22 highest. We invited Your Honor to take a look at that,
23 take a reconsideration of that which I am comfortable the
24 general law permits. It's not a reopening of the
25 sentencing hearing. It's consistent with what 17-25-326

1 provides. And I know Your Honor made a reference to the
2 Federal sentencing guidelines but I know Your Honor also
3 read that sentencing data. It doesn't lie. And the
4 average sentence was something like 5.8 -- active
5 sentence was 5.8 years. So Your Honor's reduction to
6 five is totally consistent with the sentencing history in
7 this County of felony D-U-I death cases; again, with
8 respect to the family.

9 This ultimately -- ultimately a felony D-U-I death
10 case always involves someone who has tragically been
11 killed by a driver who is driving under the influence and
12 usually involving a smashed car and where the driver did
13 something else to violate the law as the statute requires
14 so that the sentencing in these cases necessarily must
15 focus on the circumstances of the defendant and the
16 circumstances of the offense.

17 And it is correct that Sam McCauley in the emergency
18 room made the statements that Ms. Caperton's sister said
19 that he made as reported by the police. But as Your
20 Honor might recall he was in a state of alcoholic
21 blackout. He didn't remember anything from when he last
22 was walking back to the boat at the marina where he and
23 his friends were until he woke up in the emergency room
24 and he was told by a police officer that he killed
25 somebody. Second only to the tragic death of Ms.

1 Caperton I can't think of anything more horrible than to
2 experience something like that by this young man who
3 never even had a traffic ticket in his life. ^{Previous} ~~incident~~ / ~~Alcoholic~~

4 So I don't acknowledge, Your Honor, as I've said
5 that this is a reopening of the sentencing hearing. But
6 it sort of invites the query how much time is enough.
7 Your Honor has already observed that as a statement of
8 public policy the General Assembly has expressed the
9 intent that in some cases a felony D-U-I involving death
10 one year is enough.

11 So certainly five times that for the youngest
12 offender in the population group that we studied with no
13 record at all and the circumstances that put him there,
14 is certainly enough. It's also in the range of the
15 average sentences imposed.

16 We've heard nothing today that is ^{Not So} ~~new~~. There has
17 been no showing of good and sufficient cause to modify
18 the court's final amended sentencing orders. And thank
19 you very much for your attention.

20 THE COURT: All right. Brief response; anything
21 you want to ---

22 MS. WILSON: --- no sir, Your Honor.

23 THE COURT: All right. Thank you very much. All
24 right I will take the matter under advisement and I will
25 do a written order. I anticipate getting that done this

1 morning today before I finish work. And we'll make sure
2 that it is properly published.

3 And I do want to say to all in attendance that I am
4 always mindful of my duty to do justice, to love and be
5 merciful, and to be humble and to treat everyone with
6 dignity, respect, and to be fair. That is to be equal in
7 my treatment to all who come before me. Again, this is a
8 most tragic case and my heartfelt sympathy goes to
9 everyone. Thank you and court is adjourned.

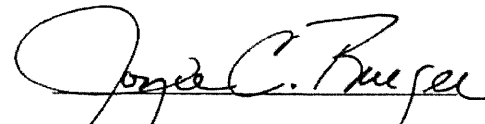
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is a true, accurate, and complete Transcript of
Record of the proceedings had and evidence introduced in
the trial of the captioned case, relative to appeal, in
the Court of General Sessions for Charleston County,
South Carolina on the 1st day of August, 2013.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

September 6, 2013


Joyce C. Rueger, CVR-M
Court Reporter



COPY



Exhibit B

South Carolina Office of the Governor CRIME VICTIMS' OMBUDSMAN

Office of the Crime Victims' Ombudsman
1205 Pendleton Street, Room 463
Columbia, SC 29201



Complaint Form

Section 1 - Victim Information

Eleanor		Caperton		M
(Victim's Name)	First	Last		MI
109A Elmwood Ave.		Ladson		SC 29456
(Mailing Address)	Street	City		State Zip
NA				
Contact Telephone Number				

Section 2 - Complainant Information (Complete only if different than above)

Phyllis		Saverhoff		M
(Victim's Name)	First	Last		MI
3922 GIST Blvd		Sister		
(Mailing Address)	Street	Relationship to Victim		
Johas Island		SC 29455	843-345-1690 Cell	
(Mailing Address)	City	State Zip	Contact Telephone Number	
		843-557-0548 Home		

Section 3 - Crime Information

Judge Thomas		Hughston		
(Suspect's Name)	First	Last		MI
Violated Victims "Bill of Rights"		None		
Type of Crime/Charges		Suspect's Relationship to Victim, if any		
5/29/13 and 6/4/13		Charleston		
Date of Crime		County in Which Crime Occurred		
Solicitor's Office		Indictments! 2011 CS-10-06799/07382		Scarlett Wilson
Law Enforcement Agency Contacted		Case Number and/or Warrant Number		Name of Investigating Officer

Section 4 - Complaint Information

What agency complaint is against: Judge Thomas Hughston-Circuit 8 Judge	
Victims' right(s) you feel were violated: My victims "Bill of Rights" were violated when Judge Thomas Hughston cut the sentence as the Defendant, Samuel McCowley, in half behind closed doors and did not notify neither the victim's family nor the Solicitor's office.	How you would like the Office of the Crime Victims' Ombudsman to help: To demand that Judge Hughston nor any Judge ever be allowed to violate a victims Bill of Rights. To Demand victims be heard and able to attend Hearings for Sentencings. Judge Hughston has violated the integrity of the Justice system. I would request that J. Hughston (Selon's friend) be removed from the Court as

Section 5 - Victim Service Provider/Victim Advocate

Have you spoken with an advocate? ☒ YES ☐ NO

Laura Hutson

Advocate's Name

MADD - Mothers Against Drunk Driving

Advocate's Agency

Section 6 - Referral Service

☒ Law Enforcement Victim Advocate

☐ Solicitor's Office Victim Advocate

☐ Courts

☐ State Agency

☐ Law Enforcement

☒ Solicitor's Office

☐ Constituent Services

☐ Faith-based

☐ Non-profit Organization

☐ Internet

MADD

☒ Other

Section 7 - Consent to Investigate

In order to conduct an inquiry into your complaint, the CVO shall forward copies of your complaint to the person, program, and agency against whom you make the allegation, and conduct an inquiry into the allegation stated in the complaint. In carrying out the inquiry, the CVO is authorized to request and receive information and documents from the complainant, elements of the criminal and juvenile justice systems, and victim assistance programs that are pertinent to the inquiry. Following each inquiry, the CVO shall issue a report verbally or in writing to the complainant and the persons or agencies that are the object of the complaint and recommendations that in the ombudsman's opinion will assist all parties. The persons or agencies that are the subject of the complaint shall respond, within a reasonable time, to the CVO regarding actions taken, if any, as a result of the CVO's report and recommendations.

By signing below, you are giving your consent to the CVO to disclose this information to the agency stated in your complaint.

I understand that upon receipt of this form, The South Carolina Governor's Office of the Crime Victims' Ombudsman will conduct an inquiry into my complaint and I hereby consent to such an investigation.

I certify that I have read and understood all of the above statements.

Signature Rhonda M. Swartz

Date 7/28/13

No written response as of
10/1/13

SECTION 16-3-1640. Confidentiality of information and files.

Information and files requested and received by the ombudsman are confidential and retain their confidential status at all times.

Please return pages 1-3 of this form to:

Office of the Crime Victims' Ombudsman, 1205 Pendleton Street, Room 463, Columbia, SC 29201.

Section 8 - Statement of Complaint

Please provide as much detailed information about the crime and your complaint as possible. Use additional paper if necessary. You may also attach any other documentation you feel is necessary to the inquiry. Be sure to include what agency/entity your complaint is against.

This Complaint is against 8 Circuit Judge Thomas Hughston in the case of State of South Carolina vs. Samuel A. McCauley, Defendant.

On July 23, 2011 a party was in progress on a boat at Dolphin's Marina in Charleston, S.C. As all the attendants were underage, the alcohol for this party was furnished by the mother of one of the attendants, Taylor Jane Holland. No car keys were taken from the teens. This party was a deliberate attempt to get drunk. Samuel McCauley arrived at this party around 4:30P.M. He had been furnished a bottle of rum on the boat. Close to 12:00 midnight McCauley obtained his car keys and took off running to his car. Friends could not catch him but shortly after one of his friends, Branch Moore, had him on the phone telling him to pull the car over but McCauley was not making any sense. McCauley drove his car up the Romney St. EXIT and was driving on the wrong side of the interstate 26. As he rounded a curve McCauley hit my sister head on traveling about 60MPH. My sister died about 15 minutes later. McCauley, in his alcoholic blackout, remembered nothing of this accident at the hospital. My sister, Eleanor Caperton, was driving home from her 2nd job as a security guard at the Water Company in Chas. After a guilty plea on May 14, 2012 and a sentencing hearing on January 18, 2013, McCauley was sentenced concurrent sentences of 15 years SUSPENDED to the service of 10 years for Felony DUI with death and 10 years for Reckless Homicide. There had been an 8 month pre-sentencing investigation for the Defendant and the sentencing Hearing was extremely long lasting 3½ hours. A motion to reconsider these sentences was filed on January 25, 2013. On May 20, 2013 and June 4, 2013 the Court signed amended sentencing sheets reducing the Defendant's sentence to 15 years suspended to the service of 5 years for Felony DUI with death and 5 years for Reckless Homicide. Judge Hughston took it upon himself to reduce these sentences without notifying neither the Solicitor's Office nor Eleanor Caperton's family. Judge Hughston was NEGLIGENT in his authority by cutting McCauley's sentence in half. He "backdoored" my family and the Solicitor's Office also violating my family's Victims "Bill of Rights", to be seen and heard at a hearing. Judge Hughston stated in the news media that he cut these sentences due to the lack of specific state sentencing guidelines. He stated his sentencing more closely corresponds to the federal guidelines. However, the Solicitor's Office nor any other agency can tell me nor show me exactly what those federal guidelines are. I have requested to have these Federal Guidelines given to me before the hearing on August 1, 2013, however, this is not being done. How can any judge in a court use this as his premise for cutting sentences and not furnish this information to back himself up? These sentences should NOT be cut on this premise. Judge Hughston is violating the integrity of the judicial system in Charleston and is opening the door for other judges to do the same. Judge Hughston needs to be removed from his position as Circuit 8 judge. One other point I would like to mention about this case is that McCauley had a previous incident just one month prior to the killing of my sister on July 24, 2011 where he was at a party, drank too much and in a blackout took off running and was later found in the basement of a friend's home. He had no memory how he got there. With this first incident, ~~he should not have been furnished alcohol nor left his car keys. This was a warning of what was to happen and nobody stopped it.~~ ☐ Check here if your statement continues on attached pages.

I certify that the information set forth herein is true and correct.

Signature *Phyllis M. Swenberg*

Date 7/28/2013

The South Carolina Governor's Office of the Crime Victims' Ombudsman (CVO) cannot conduct an inquiry into your complaint unless the complaint form is completed, signed and submitted either by mail: Office of the Crime Victims' Ombudsman, 1205 Pendleton Street, Room 463, Columbia, SC 29201 or by fax: (803) 734-1428. The CVO does not accept complaints by email.

Exhibit B

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

vs.

SAMUEL A. MCCAULEY

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT
)
)
)
)
)
)

Indictments: 2011-GS-10-06799, 07382
Reckless Homicide and Felony DUI with Death

STATE'S MOTION TO REOPEN
DEFENDANT'S SENTENCING HEARING

The State moves this Court to re-open the sentencing hearing of Defendant Samuel A. McCauley. After a guilty plea on May 14, 2012 and a sentencing hearing on January 18, 2013, this Court sentenced the Defendant to concurrent sentences of, *inter alia*, 15 years suspended to the service of 10 years in prison for Felony DUI with Death and 10 years in prison for Reckless Homicide. The Defendant filed a motion to reconsider these sentences on January 25, 2013. Attorneys for the Defendant and for the State filed memoranda addressing the reconsideration motion. Despite the caption of the Defendant's motion claiming a request for reconsideration, it was in substance and fact a motion to re-open the sentencing hearing. The Defendant's principle argument was not presented at his original sentencing hearing. Through his Memorandum in Support, the Defendant offered much new information.

On May 20, 2013 and June 4, 2013, this Court signed amended sentencing sheets reducing the Defendant's sentence to, *inter alia*, 15 years suspended to the service of 5 years in prison for Felony DUI with Death and 10 years suspended to 5 years in prison for Reckless Homicide. In all practical effect, the sentence was slashed in half. Neither the Defendant nor the

State was notified of this Court's intentions to proceed without a hearing or even given notice of the reduced sentences.

The State recognizes language in Rule 29, SCRCrimP. which provides that a court may grant a post-trial motion without a hearing. The Rule(s), however, must be read in the broader context of the South Carolina Constitution and state statutes.

The South Carolina Supreme Court outlined the history of the Victims' Bill of Rights in *Ex Parte Horace Littlefield and Jimmy Jeter, In Re The State of South Carolina v. Jack Williams*, 343 S.C. 212, 540 S.E. 2d 81 (2000). The Court wrote:

In the early 1970s, a victims' rights movement emerged in this country. This movement focused on integrating the crime victims' concerns into the criminal justice process.^{EN2} In response to the victims' rights movement, most states enacted statutes that required prosecutors to inform crime victims of all criminal proceedings against their alleged perpetrator. Furthermore, these statutes gave the victim a voice at the critical stages of the criminal justice proceedings. *See Tobolowsky, supra*.

^{EN2}. *See* Peggy M. Tobolowsky, *Victim Participation in the Criminal Justice Process: Fifteen Years After the President's Task Force on Victims of Crime*, NEW. ENG. J. ON CRIM. & CIV. CONFINEMENT 21 (Winter 1999).

In response to the victims' rights movement, the South Carolina General Assembly enacted several laws to protect victims' rights, including S.C.Code Ann. § 16-3-1505 (Supp.1999) and S.C. Const. art. I, § 24(B) (Supp.1999). The General Assembly declared the intent behind section 16-3-1505 was to "ensure that all victims of and witnesses to a crime are treated with dignity, respect, courtesy, and sensitivity." On November 5, 1996, South Carolina citizens overwhelmingly ratified the Victims' Bill of Rights, which ensures victims are informed of their rights and any alternative means that might be available to them if the criminal prosecution is unable to meet their needs.¹

Under South Carolina law, prosecutors and judges have more duties toward victims than we once had. We both must respect the rights granted to the victims by the Victims' Bill of

¹ The Victims' Bill of Rights includes the following language:

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute; [...](5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing[...]. S.C. Const. art. I, § 24(B) (Supp.1999)

Rights, which includes the right to be informed of and attend any criminal proceeding which is dispositive of the charges where the defendant has the right to be present. *See Littlefield*, at 218.

It undermines the good intentions of our legislature and citizenry to even imagine that the way to avoid the right of a victim's right to be "informed of and attend" and "heard" at a dispositive criminal proceeding when drastically changing its effect is simply to decline to hold a hearing at all. Understandably, if a post-trial motion is denied and the *status quo* preserved, a hearing with defendants and victims would not be necessary or required. If a Defendant's sentence were increased, a defendant certainly should have the right to be heard regarding the rationale for considering new information and to be present at the pronouncement of the new and different adverse sentence.² Likewise, the victims should have a right to be present and to be heard at any re-sentencing when new information is considered and the Court is considering a sentence adverse to their requests and a departure from the previous sentence. This Court, in effect, re-opened a hearing, conducted a re-sentencing and slashed the defendant's sentence in half with no input from the victims. (The Solicitor represents the State of South Carolina, not a particular victim.) The Defendant originally was sentenced in open court and any changes to his sentence should have been delivered in open court.

CONCLUSION


The State respectfully moves this Court to re-open the sentencing of Samuel McCauley.

The Court's approach to resentencing the Defendant threatens the integrity of our criminal justice system. The Court did not preserve and protect the victims' rights to justice and due process and could not be considered as treating the victims with fairness, respect and dignity.

² In *State v. Bradley*, however, the South Carolina Court of Appeals held that a motion to reduce sentence was not a "critical stage" of criminal proceeding and, thus, defendant had no due process right to be present at hearing on such a motion. *Bradley*, 324 S.C. 387 (1996). Unlike the victims in this case who are not represented by an attorney, defendant Bradley was represented by an attorney who spoke on his behalf.

In short, reducing the Defendant's sentence in this manner was in violation of the Victims' Bill of Rights and S.C. Code Ann. §16-3-1505.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Scarlett A. Wilson", written over a horizontal line.

Scarlett A. Wilson
Ninth Circuit Solicitor

RECEIVED
JUL 1 2011
CLERK OF COURT
NINTH CIRCUIT
JUL 1 2011

August 13, 2013

The Honorable Judge Thomas L. Hughston, Jr.

100 Broad Street, Suite 368

Charleston, SC 29401-2284

Dear Judge Hughston,

Thank you so much for honoring the survivors of crime victim, Eleanor Caperton, and allowing them to speak. MADD SC appreciates you reopening the defendants' sentence hearing. Having been one of the authors of the constitutional amendment for crime victims, it is clear that crime victims have separate rights from those of the defendant and of the state. The comments concerning rule 29 from the defendant's attorney, Capers Barr III, fell short of understanding the constitutional rights of crime victims. The defendant was represented by the defense attorney, Capers Barr III. The state was represented by a Solicitor, Scarlett Wilson. No one was notified who represented the crime victim. The prosecutor is tasked in crime victim law along with others, for notification to crime victims, but they do not represent the crime victim, they represent the state.

I was very disappointed in the court's reduction from 15 years to 5 years. The sentence was far too low. If you are harboring an opinion that young DUI offenders are "thrown in with hardened criminals", it is my understanding that Mr. McCauley will be placed after evaluation at Kirkland into a minimum security jail with other like offenders.

Mrs. Eleanor Caperton's sister, Phyllis Savenkoff and her family were very offended by your laughter and seemingly lighthearted attitude at the rehearing. Your facial expressions during the time of Mrs. Savenkoff's testimony were offensive and not worthy of your judicial position.

Hughston Page 2

Preinvestigation Statement
State of S.C. v. Samuel McCauley
Date of Accident: 11/24/11
Case # 20110704950
Victim: Eleanor Caperton

Exhibit D

My sister, Eleanor Caperton, was a wonderful lady who was loved by everyone who knew her. She had two sons, Ron Grey and Sean Grey, and two beautiful grandchildren named Fallon and Harrison who loved their "Backa" very much. In one of my last conversations with my sister she told me that all she wanted was to live long enough to see both of her grandchildren grown and to know what they would become in life. Eleanor loved life, loved to travel with her friends and loved being with her family. She was a very giving person who would help anyone in need. She loved all animals and was very passionate in the care of her own pets Angel and Candy.

As my sister she was seven years my senior and was my only sibling. Being the older sister she was my mentor, my confidant and most of all, my best friend. She provided inspiration and guidance to me until the day she died. She was very hardworking and her work ethics surpassed most people. She really enjoyed being a bank teller where she could meet and talk to people every day. She held this job for over 50 years. She also enjoyed her job as a security guard. She was in this line of work on the weekends for over 10 years. Eleanor's love and life touched all who knew her and there is a large void in the lives of everyone she knew and touched.

In regards to the sentencing of Samuel McCauley, please know that myself and the entire family of Eleanor Caperton desires Mr. McCauley to serve the maximum sentence for this crime of 25 years. As my sister would have had at least a good 15 years more to live, we would desire a minimum sentence of no less than 15 years for Mr. McCauley to serve for his crime. Taking the life of another person in a DUI felony accident is unfathomable and there is far too many of these types of accident in South Carolina. The justice system in South Carolina needs to impose stricter sentences for DUI felony sentencing in this state.

I am recommending the following conditions be adhered to by Mr. McCauley at the time of his sentencing:

- A) Participate in Victim Awareness Classes in prison if available.
- B) To have no internet access in prison.
- C) To write weekly letters to the family members (sons and sister) from prison describing life in prison.
- D) To perform community service and make a donation to Mothers Against Drunk Driving.
- E) To make payment to the victim's two sons in the amount of \$10.00 a week to each son to remind the offender of Eleanor Caperton and the crime he committed.
- F) That Mr. McCauley not be allowed the use of any alcohol or other drug use upon his parole.
- G) That Mr. McCauley submit to random alcohol and other drug testing on a regular basis.
- H) That Mr. McCauley pay for any mandatory urinalysis or other drug testing.
- I) The installation of a breathalyzer on vehicles that Mr. McCauley would use.
- J) That Mr. McCauley attend victim Impact Panels or classes when returned to the community.

Please know that it is my family's deepest desire that any time which Samuel McCauley spent under house arrest not be considered as part of his sentencing as during this time Mr. McCauley was not electronically monitored nor monitored in any way nor by anyone. He was free to come and go as he pleased. Putting Mr. McCauley under the supervision of his mother and not the justice system makes it impossible to know if proper protocol was followed by Mr. McCauley.

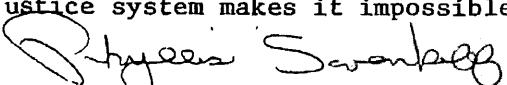

Phyllis Savenkoff, Sister of Eleanor Caperton
3972 Gift Blvd.
Johns Island, S.C. 29455
557-0548 Cell-345-1690

Exhibit F

Kelly M. DeHay



Charleston County
Chapter Leader
2441 S. Live Oak Drive
Moncks Corner, SC 29461

T 843 499-0328

kgkmartin@gmail.com

September 19, 2013

Judicial Merit Selection Commission

To Whom It May Concern:

I volunteer as a Victim Advocate for Mothers Against Drunk Driving. I'm well trained in this and have sat in many courtrooms with many victims. Of course, it is always a very sad occasion and is very traumatic for the victims and victims' families. Thankfully, the people who work in the court system are usually extremely respectful and very professional.

My views don't necessarily represent those from MADD, but I'm writing this as a volunteer who is passionate about helping victims. I've been in their shoes and know how it feels to lose someone. I know how it feels to sit in a courtroom, feeling helpless as a stranger decides the fate of the person who ripped apart a family.

I know that it is quite common to meet to discuss a reduction in the defendant's sentence after the original sentence has been handed down. However, it is highly uncommon and a violation of the rights of the victims to hold such a meeting without the knowledge of the family or the prosecution.

On Thursday, August 1, 2013, I sat with Eleanor Caperton's family as they hoped that Judge Hughston would reconsider his decision to reduce by half Samuel McCauley's sentence. While each member of the family was very upset that this

Exhibit F

had occurred without their, or the prosecutor's, knowledge, they sat quietly and respectfully as the hearing went on.

One would think that the Judge would be respectful, as well. However, Judge Hughston made it clear in the beginning that this was just a formality. He made excuses as to why the proper people had not been notified, none of which seemed true. This statement would be the first blow to the family.

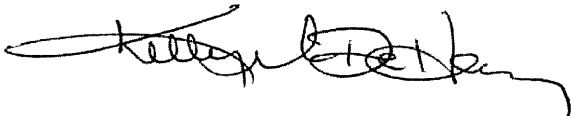
Later, the Judge chuckled at something someone said, which almost caused my jaw to drop. How could anyone, especially a Judge, think it was appropriate to laugh in a fatal DUI hearing?

This hearing seemed like more of a casual conversation with an old friend instead of the serious matter it was supposed to be. It is well known that Capers Barr, the defendant's counsel, is old friends with Judge Hughston. That fact was rather noticeable in the courtroom, as he dismissed much of what Scarlett Wilson and Jennifer Kinzler Williams were saying in defense of the original sentencing.

At the end of the hearing, the Judge said that he would issue his decision by the end of the day. Most of us knew that, by the way he acted, he would not change a thing. True to everyone's feelings, his final decision remained to keep the sentence reduction in place was issued within an hour.

In my opinion, the victim's family was re-victimized on that day and the day of the "secret" sentence reduction. This is not the way our judicial system should behave, and I doubt many in authority would condone Judge Hughston's actions.

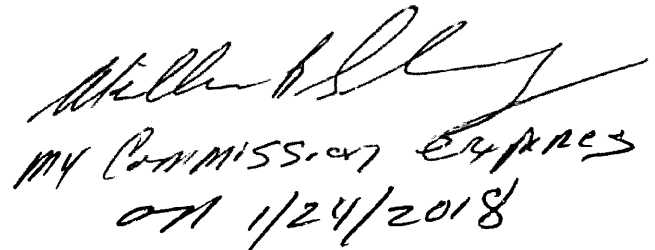
Sincerely yours,



Kelly M. DeHay



Charleston County



MY COMMISSION EXPIRES
ON 1/24/2018

Exhibit G

9/20/2013

To Whom It May Concern;

This letter is in reference to Judge Thomas Hughston, a circuit judge for Charleston County. Judge Hughston was the presiding Judge on the trial of Samuel Mccauley who pled guilty to Felony DUI with Death and reckless homicide of my aunt, Eleanor Caperton . When we first found out who the judge would be we were concerned due to the fact the defendants lawyer and Judge Hughston went to the Citadel and the USC School of Law together and we were worried about a fair trial due to their background, but that turned out to not be our only concern. Judge Hughston's actions on the reduction of sentence of Samuel Mccauley after a 9 mo. Pre-trial investigation and a much tougher sentence were a complete surprise to us considering there wasn't another hearing for this. When we spoke with the solitor's office, they didn't know either. During the 2nd sentencing that Judge Hughston was forced to have after the public outrage at what he had done, he was very belligerent and cocky. His demeanor in court was ridiculous. He snickered and laughed and claimed that he wasn't aware that he had to have a 2nd hearing for a reduction of sentence, which is a violation of the SC Victims bill of rights. He even made the statement that we had nothing new to bring to the table, but yet neither did Capers Barr, Mccauley's lawyer. He did not seem interested in what we had to say and seemed annoyed that he was having a 2nd hearing. He was rude and I am sickened that someone of his character is sitting on a bench as a Judge in SC. His judgment leaves a lot to be desired. I feel that Judge Hughston should not be renewed as a circuit court Judge for Charleston County.

Thank you,


Gina Buchardt

September 27, 2013



MY COMMISSION EXPIRES

1/7/19

Judge cuts sentence for fatal DUI in half

BY DAVE SHULDE
dshulde@postandcourier.com

Just a week shy of the anniversary of her sister's 20th birthday, a local woman with a long criminal history, including a conviction for murder, was sentenced to a year in jail for a fatal DUI.

Superior Court Judge 23, Judge David Shulde, sentenced the woman, who is 42, to a year in jail for a fatal DUI.

The woman, who is 42, was sentenced to a year in jail for a fatal DUI. She was charged with driving under the influence of alcohol, which resulted in the death of her 22-year-old sister.

The woman, who is 42, was sentenced to a year in jail for a fatal DUI. She was charged with driving under the influence of alcohol, which resulted in the death of her 22-year-old sister.

The woman, who is 42, was sentenced to a year in jail for a fatal DUI. She was charged with driving under the influence of alcohol, which resulted in the death of her 22-year-old sister.

Shulde said the woman's sentence was reduced from two years to one year because of her long history of criminal activity.

The woman, who is 42, was sentenced to a year in jail for a fatal DUI. She was charged with driving under the influence of alcohol, which resulted in the death of her 22-year-old sister.

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Suspect arrested in night club shooting

BY DAVE WONDAX
dwondax@postandcourier.com

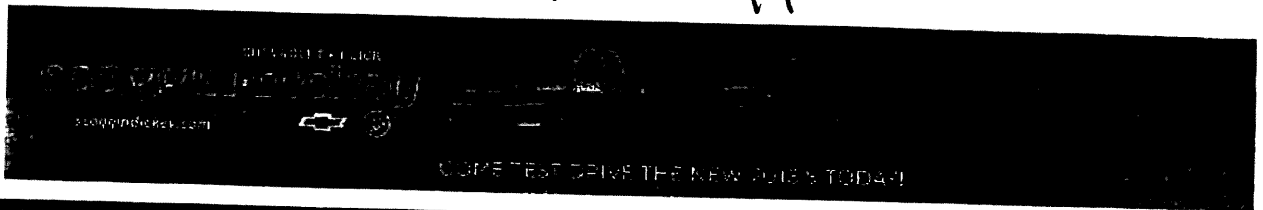
A suspect in the fatal shooting of a woman celebrated her birthday at a St. George nightclub last night.

The woman, who is 42, was sentenced to a year in jail for a fatal DUI. She was charged with driving under the influence of alcohol, which resulted in the death of her 22-year-old sister.

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Man convicted of killing woman in DUI wreck has sentenced reduced

Posted: Jul 17, 2013 5:46 PM EDT

Updated: Jul 17, 2013 7:32 PM EDT

By Ray Rivera - email

CHARLESTON, SC (WCSC) - A 20-year-old man convicted of killing a 72-year-old woman in a DUI car wreck may get out of prison in five years after his sentence was reduced.

On Wednesday, officials with the Ninth Circuit Solicitors office say they have filed to reopen sentencing for Samuel McCauley, after prosecutors say they were not notified of a reduced sentence for McCauley that happened in May.

According to prosecutors, the court signed an amended sentencing sheet on May 20 which reduced McCauley's original sentence of 10 years in prison to five years. McCauley was originally sentenced to 10 years in January after pleading guilty to reckless homicide and felony DUI for the July 24, 2011 incident that killed 72-year-old Eleanor Caperton.

The prosecutor's office said McCauley's original sentence was slashed in half, and McCauley and the state were not notified of the reduced sentences.

"The court's approach to re-sentencing the Defendant threatens the integrity of our criminal justice system," Ninth Circuit Solicitor Scarlett Wilson stated in the motion. "The court did not preserve and protect the victims' rights to justice and due process and could not be considered as treating the victims with fairness, respect and dignity."

Prosecutors in the case said McCauley intended to get drunk and had to be held accountable for his actions.

According to court officials, McCauley had been drinking heavily on July 24, 2011 during a party on a boat at a marina before the deadly accident. McCauley's blood alcohol level was .209 at the time of the accident, according to authorities.

Investigators say McCauley's car was going the wrong way on I-26 early near downtown Charleston just after midnight when the incident happened.

According to police, McCauley's Nissan Maxima then crashed into a Honda Civic driven by Caperton. Prosecutors say McCauley was traveling 60 mph in a 35 mph zone at the time of the impact.

Both drivers were transported to the Medical University of South Carolina for multiple injuries. Police say Caperton, of Ladson, died as a result of her injuries at the hospital.

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Exhibit H

87° Scattered Clouds
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Judge upholds reduction of jail time in fatal DUI

dslade@postandcourier.com

In a case that raised questions about South Carolina's lack of sentencing guidelines, a judge in Charleston declined Thursday to change his decision cutting in half the jail term of a drunken driver who killed an elderly woman. The case of Samuel McCutney, and the decisions made by Circuit Judge Thomas L. Hughston Jr., also raised questions about the state's Victims' Bill of Rights, and whether it gives victims a right to a hearing when a sentence reduction is considered.

McCutney, who was 19 at the time, got drunk, sped the wrong way up an Interstate 26 ramp and struck 72-year-old Eleanor Caperton's car head-on in July 2011. She died from her injuries, and he was so drunk that he didn't know how he came to be in a hospital.

McCutney pleaded guilty to charges of reckless homicide and felony DUI involving death, and he was originally sentenced by Hughston to spend 10 years in jail. In May, Hughston cut McCutney's jail time to five years, without holding a hearing, after being asked to reconsider by Caperton's lawyer.

The 9th Circuit Solicitor's Office had argued against any sentence reduction.

At issue Thursday was the way in which Hughston handled the re-sentencing. Issuing a post-trial ruling without holding a hearing is allowed, but the victim's family and the Solicitor's Office were upset, particularly because they weren't aware the sentence had been reduced until July.

The latest hearing was held after Solicitor Scarlett Wilson filed a motion seeking to reopen the sentencing, in which she said the court's approach "threatens the integrity of our criminal justice system."

The result was that the victim's family got another chance to tell the judge about their pain and call for a tougher sentence — but the sentence was not changed.

"Today was just a show, to satisfy the Victims' Bill of Rights," said Phyllis Savenkoff, Caperton's sister.

"He's not going to change anything," Savenkoff said after the hearing.

Hughston issued his ruling about an hour later, confirming Savenkoff's suspicions.

court, Wilson did not repeat the statements in her motion about Hughston's actions threatening the justice system.

"I don't intend to criticize the court," the solicitor told Hughston. "I'm here to protect the process."

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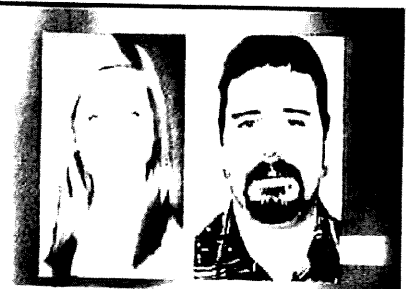


Exhibit H

Willson said that under the state's Victims' Bill of Rights, the victim's family should have had a chance to attend and speak when McCauley's sentence was reconsidered. McCauley's lawyer, Capers Barr, disagreed.

Barr said the rules of criminal procedure allow for post-trial rulings to be made without holding a hearing, and that while the Victims' Bill of Rights guarantees victims the right to attend hearings, it doesn't require that there be a hearing. "We still contend the court made no error in the manner in which the court ruled," Barr said.

Hughston made the same point, but said he wanted to address the issue.

"I think that I was within the law by not having a hearing, but I don't want there to be any question about anyone being denied a right to be heard, under the Constitution of this state," Hughston said in court.

Former S.C. Attorney General Charlie Condon, now a lawyer in private practice in Mount Pleasant, led the 2005 effort to add the Victims' Bill of Rights to the state Constitution. He said Thursday that he doesn't think the Victims' Bill of Rights was circumvented when Hughston reduced McCauley's sentence without a hearing, but he thinks hearings probably should be held when sentences are reconsidered.

"In light of this, I think the better practice would be to have a hearing, and I think the legislation should be changed to say that if there is a sentence reduction, the victims should be allowed to speak," Condon said.

"What struck me about (the McCauley case) was, I think Judge Hughston should be commended for having the hearing, because it's really a gray area," he said.

In his ruling Thursday, Hughston also said the case illustrates the need for sentencing guidelines in South Carolina. "The legal range in this case is one to 35 years," he wrote. "That's too much discretion."

Hughston said the lack of sentencing guidelines results in unfair or unequal treatment for crime victims and defendants.

McCauley's family members live in Iowa and did not attend the hearing.

Caperton's niece, Gina Buchardt, said her aunt had been planning to take a cruise in 2011, before she was killed in the wreck caused by McCauley. Buchardt said that next week, Caperton's family members will go on a cruise and scatter Caperton's ashes.

Reach David Slade at 937-5552 or Twitter @DSLadeNews.



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Page 1

Charleston, North Charleston, S.C. ★ ★ \$2.00

August 25, 2013
Exhibit H

Is he really the 'Felon's Friend'?

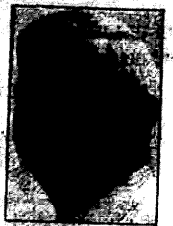
Judge vigorously defends his record

BY NATALIE CAULA
ncaula@postandcourier.com

A young man in shackles stood in silence, the seconds ticking by, as Circuit Judge Thomas Hughston Jr. stared down at the paperwork before him, considering the list of offenses summarizing the man's criminal career. The man had just pleaded guilty to a stalking charge, and Hughston wanted him to understand the ramifications of that action.

"You're about that close," Hughston said, holding his fingers a hair apart, "to you going to prison for a long time. A young man like you, it wouldn't be nice. It wouldn't be a nice place to be."

Hughston paused, leaned his chair forward, and sentenced the man to five years behind bars. But before the weight of that sentence could sink in, Hughston quickly suspended the prison time and placed the man on probation for two years.



Hughston

POLL

How would you rate local judges' decisions? Vote at postandcourier.com

"My own sense of him is that he fails the lock-them-up, throw-away-the-key approach has failed when it comes to providing a safer community when people are released," Pennington said. "It does a good job of incarcerating them while they are gone, but I think he's very conscious of the fact that part of the criminal justice system is steering people who are capable of doing better toward a healthier lifestyle."

Others don't see it that way. Charleston Thug Life, a local law-and-order blog, has kept a steady drumbeat of criticism for months calling for Hughston's departure. In one post, Hughston is blasted for not sending a man to prison who committed four offenses while already on probation for other crimes. In another, Hughston is faulted for giving probation to a drug convict who later was charged with armed robbery.

Calling him Judge Thomas "Felon's Friend" Hughston, the anonymous blogger urges citizens to pressure state lawmakers to dump Hughston.

Despite such rhetoric, no official complaints have been filed with the South Carolina Judicial Merit Screening Commission, which periodically reviews judges. With no opposition, the commission has waived Hughston through to reappointment without a formal hearing since 2001.

Decisions draw scorn

Still, some of Hughston's most recent decisions have struck a nerve in the legal community.

On July 11, Hughston gave 55-year-old dentist John Newton Eagle probation on a charge of Lewd Act on a minor.

Eagle, who had been accused of inappropriately touching an 8-year-old girl in his Sullivan's Island home, had entered an Alford plea, meaning he did not admit guilt but conceded there was enough evidence to convict him.

As part of his sentence, Eagle will have to register as a sex offender and wear a satellite monitoring device for life. The victim's family did not oppose the sentence, but some people, including former People Against Rape Director Melanie Marek, felt prison was warranted.

"The judge should have given him some time," she said.

Hughston called the sentence a just punishment, one that would keep Eagle in line. "Everyone in the community knows about it, knows what he's done," he said. "I think I accomplished everything good I could accomplish with that sentence."

Hughston drew more scorn when he cut in half a 15-year prison sentence

he had imposed in January for Samuel McCauley, who at age 19 killed Eleanor Caperton in a drunk-driving crash on Interstate 26 in July 2011. The judge took that action in June after McCauley's attorney presented information that his original sentence was too high compared with other felony DUI cases in the county.

But the move, done without a formal hearing, angered Caperton's family, who didn't learn about it until two months later.

The South Carolina chapter of Mothers Against Drunk Driving called Hughston's action "underhanded," and 9th Circuit Solicitor Scarlett Wilson said in a motion that the judge's handling of the resentencing "threatens the integrity of our criminal justice system."

Phyllis Savenkoff, Caperton's sister, felt so slighted that she filed a formal complaint with Gov. Nikki Haley's office.

"I don't believe our family got justice at all. I feel like his behavior was very unprofessional and made our family very uncomfortable and feel irrelevant," she said. "This is not the way a judge should conduct himself. Hopefully somewhere down the line, he won't be on the bench."

Haley's staff declined to comment on the complaint, citing confidentiality laws.

The disdain of his critics is not lost on Hughston, who lately has received some angry phone calls and anonymous letters.

"You can't help but listen to them and know it affects you," he said, adding that it is difficult not to take the criticism personally.

Still, Hughston stands by his work and his belief in rehabilitation, that people can improve their lives and, at times, deserve another chance.

"The easiest thing for a judge to do is sentence defendants to the maximum in every case. No other facts are considered. I don't think it results in a just sentence," he said.

So, in most cases, Hughston offers advice to criminals, as he did recently with a man who pleaded guilty to having a gun during a traffic stop.

"What I keep telling people like you is if you think you're going to go somewhere where you think you may need a pistol, don't go," Hughston said, shaking his head. "Stay home. Go to the picture show. Go play basketball or baseball."

And with that, he let the man go free.

Reach Natalie Caula at 937-5594 or Twitter.com/ncaula.

Is he really the 'Felon's Friend'

Page 2

HUGHSTON from Page A1

4D in the Charleston County courthouse, where Hughston presides over dozens of plea hearings each month. A short, bespectacled man with a head of white hair and a deep, gravelly voice, he sits in judgment on a parade of criminals seeking leniency in return for an admission of guilt.

They, their families, their attorneys and their victims fill the hard wooden seats in the gallery and, at times, overflow into the hallway outside. Hearing more than 1,300 pleas a year, Hughston has the process down to a science, dispensing justice in what he sees as a firm, but humane manner.

"I want them to feel good when they leave my courtroom," he told *The Post and Courier* in a recent interview. "Because it's the first step in rehabilitation."

Hughston's approach to punishment has drawn scrutiny and criticism lately following decisions that helped two high-profile offenders escape years in prison for their crimes. One decision let an accused child molester on the loose, and another let a drunk driver who killed an elderly woman go free.

For years, members of the law enforcement community have grumbled about Hughston's soft touch in sentencing, referring to him as "Judge Hug-a-Thing" and worse. But like some lawyers who also have chafed at Hughston's perceived leniency, none would agree to speak on the record, saying they did not want to anger a judge who could preside over their cases in the future.

Lately, though, some victims' families and their advocates have become increasingly vocal in their criticism of Hughston. Among them were the family members of 72-year-old Eleanor Caperton, who were enraged when Hughston reduced the sentence of the drunk driver who killed her.

"In my opinion, (Hughston) thinks that he is above the law," said Gina Buchardt, Caperton's niece.

The *Post and Courier* reviewed Hughston's sentencing records for the past year and compared those numbers with the records of two other judges from the same circuit, Markley Dennis and Kristi Harrington. The analysis found:

● Hughston, 70, placed more than twice as many offenders on probation than he sent to prison, nearly half of his cases.

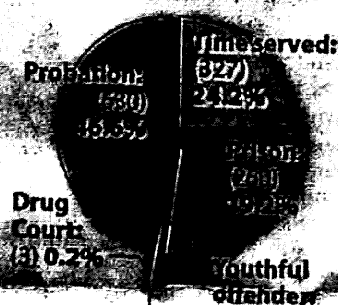


Judge Thomas Hughston keeps this sign in his office to remind himself of the purpose of sentencing.

Sentencing records

The *Post and Courier* reviewed one year's worth of sentences — about 2,000 cases — handed down by 3 Charleston County circuit judges. These charts represent the types of sentences each imposed for various felony crimes.

Circuit Judge
Thomas Hughston, Jr.
July 2012-July 2013
Number of sentences: 1,351



"I want them to feel good when they leave my courtroom, because it's the first step in rehabilitation."

Judge Thomas Hughston

Post and Courier
January 19, 2013

Exhibit H

at DUI sentencing

Driver voices remorse; victim's family deeply sad



Eleanor Caperton, 72, was driving home from work on July 23, 2011, when she was killed.

BY NATALIE CAULA
ncaula@postandcourier.com

Conflicting emotions filled a Charleston County courtroom Friday when a young man whose drunken driving killed a Charleston woman stood shakily waiting to be sentenced.

One side of the room saw a reckless man who made a choice that took the life of a loved one.

The other side saw a good and remorseful fellow who made a tragic mistake.

Samuel McCauley, 20, of

Mount Pleasant, stood in the middle, apologetic and hopeful for mercy after pleading guilty in May to felony DUI and reckless homicide in the death of 72-year-old Eleanor Caperton.

Caperton was driving home from work on July 23, 2011, when McCauley, driving the wrong way on Interstate 26, slammed into her car head-on.

"Hopefully your loss of liberty will serve as a stop sign for others," Circuit Judge Thomas Hughston said moments before sentencing McCauley to a 15-year prison term.

McCauley must serve about eight years of that sentence before he is eligible for release.

Dressed in a striped jail jumpsuit and handcuffed, standing beside his mother, Denise McCauley, Samuel McCauley gave one final plea to the judge before he was sentenced.

"I wish I could have died in stead of her," McCauley said. "I'll be sorry forever."

The last thing McCauley remembered the night of the crash was being at the Dolphin Cove Marina, where he

Please see DUI, Page A7

POLL: Do you think 15 years in prison was an appropriate sentence for the fatal DUI? Go to postandcourier.com to vote.

Overcharged batteries likely caused

BY JOAN LOWY
Associated Press

WASHINGTON — It's likely that burning lithium-ion batteries on two Boeing 787 Dreamliners were caused by overcharging, aviation safety and battery experts said Friday, pointing to developments in the investigation of the Boeing incidents as well as a battery fire in a business jet more

than a year ago.

An investigator in Japan, where a 787 made an emergency landing this week, said the charred insides of the plane's lithium-ion battery show the battery received voltage in excess of its design limits.

The similarity of the burned battery from the All Nippon Airways flight to the burned battery in a Japan Airlines 787 that caught fire Jan. 7 while the jet was parked at

Inside

Passengers, Gov. Nikki Haley react to 787 problems, B6

Boston's Logan International Airport suggests a common cause, Japan transport ministry investigator Hideyo Kosugi said.

"If we compare data from the latest case here and that in the

U.S., we can pretty much figure out what happened," K

In the case of the 787, the battery in the plane's power unit recently had a large demand on its power. It was in the process of when the fire ignited, said a familiar with the investigation of the 787 fire in Boston. It had landed a short ti